

CN-15-519208-
Court File No.: 0004

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



**SHERIDAN CHEVROLET CADILLAC LTD.,
THE PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

CHIYODA MFG. CO., LTD., CHIYODA USA CORPORATION, and ASTI CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM
(Automotive Wire Harness Systems)**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY
LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL
LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has
not been set down for trial or terminated by any means within five years after the action was
commenced unless otherwise ordered by the court.

Date: Jan 6/15

Issued by: 
Local Registrar

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: **CHIYODA MFG. CO., LTD.**
Yubinbango 373-0847
Ota City, Funma Prefecture Nishi-cho, 126-2, Japan

AND TO: **CHIYODA USA CORPORATION**
PO Box 494, SR 2400 East
Greencastle, IN 46135, USA

AND TO: **ASTI CORPORATION**
2804 Yonezu-cho,
Minami-ku, Hamamstu-shi, Shizuoka-ken 432-8056, Japan

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 7 below):

- (a) A declaration that the defendants conspired and agreed with each other and other unknown co-conspirators to rig bids and fix, raise, maintain, or stabilize the price of Automotive Wire Harness Systems (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 7 below);
- (b) A declaration that the defendants and their co-conspirators did, by agreement, threat, promise or like means, influence or attempt to influence upwards, or discourage or attempt to discourage the reduction of the price at which Automotive Wire Harness Systems were sold in North America and elsewhere during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$100,000,000:
 - (i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 ("***Competition Act***");
 - (ii) for civil conspiracy;
 - (iii) for unjust enrichment; and
 - (iv) for waiver of tort;
- (d) Punitive, exemplary and aggravated damages in the amount of \$10,000,000;
- (e) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 ("***Courts of Justice Act***"), as amended;

- (f) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (g) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and
- (h) Such further and other relief as this Honourable Court deems just.

Summary of Claim

2. This action arises from a conspiracy to fix, raise, maintain, or stabilize prices, rig bids and allocate the market and customers in North America and elsewhere for automotive wire harness systems used in automobiles and other light-duty vehicles (“**Automotive Wire Harness Systems**”). The unlawful conduct occurred from at least as early as January 1, 1999 and continued until at least March 1, 2010 and impacted prices for several years thereafter. The unlawful conduct was targeted at the automotive industry, raising prices to all members of the Proposed Class.

3. As a direct result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid artificially inflated prices for Automotive Wire Harness Systems and/or new vehicles containing Automotive Wire Harness Systems manufactured, marketed, sold and/or distributed during the Class Period and have hereby suffered losses and damages.

4. Automotive Wire Harness Systems are electrical distribution systems used to direct and control electronic components, wiring, and circuit boards in an automotive vehicle. Automotive Wire Harness Systems include, without limitation, the following components: wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, fuse boxes, relay boxes, junction block, speed sensor wire assemblies, and power distributors.

The Plaintiffs

5. The plaintiff, Sheridan Chevrolet Cadillac Ltd. (“**Sheridan**”), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with General Motors of Canada Limited (“**GMCL**”) from 1977 to 2009.

6. The plaintiff, The Pickering Auto Mall Ltd. (“**Pickering**”), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with GMCL from 1989 to 2009.

7. The plaintiff, Fady Samaha, a resident of Newmarket, Ontario, purchased a new Honda Civic in 2009.

8. The plaintiffs seek to represent the following class (the “**Proposed Class**”):

All Persons in Canada who purchased an Automotive Wire Harness System;^{1,2} or who purchased and/or leased a new Automotive Vehicle³ containing an Automotive Wire Harness System during the Class Period.⁴ Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

¹ Automotive Wire Harness Systems means electrical distribution systems used to direct and control electronic components, wiring, and circuit boards in an Automotive Vehicle, and includes wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, electrical boxes, fuse boxes, relay boxes, junction blocks, speed sensor wire assemblies, and power distributors.

² Automotive Wire Harness Systems purchased for repair or replacement in an Automotive Vehicle are excluded from the Class.

³ Automotive Vehicle means passenger cars, SUVs, vans, and light trucks (up to 10,000 lbs).

⁴ Class Period means between January 1, 1999 and March 1, 2010.

The Defendants

Chiyoda Defendants

9. The defendant, Chiyoda Mfg. Co., Ltd. (“**Chiyoda Mfg**”), is a Japanese corporation headquartered in Ota City, Japan. During the Class Period, Chiyoda Mfg manufactured, marketed, sold and/or distributed Automotive Wire Harness Systems to customers either directly or indirectly through its predecessors, affiliates and/or subsidiaries, including the defendant Chiyoda USA Corporation (“**Chiyoda USA**”).

10. The defendant, Chiyoda USA, is an American corporation with its principal place of business in Greencastle, Indiana. During the Class Period, Chiyoda USA manufactured, marketed, sold and/or distributed Automotive Wire Harness Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Chiyoda USA is owned and controlled by Chiyoda Mfg.

11. The business of each of Chiyoda Mfg and Chiyoda USA is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of Automotive Wire Harness Systems and for the purposes of the conspiracy described herein. Chiyoda Mfg and Chiyoda USA are hereinafter referred to as “**Chiyoda**”.

Asti Defendant

12. The defendant, Asti Corporation, is a Japanese corporation headquartered in Minami-ku, Japan. During the Class Period, Asti Corporation manufactured, marketed, sold and/or distributed Automotive Wire Harness Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Asti Corporation is hereinafter referred to as “**Asti**”.

Unnamed Co-Conspirators

13. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, including, but not limited to Furukawa Electric Co. Ltd., American Furukawa Inc., Fujikura Ltd., Fujikura America Inc., Fujikura Automotive America LLC, Lear Corporation, Kyungshin-Lear Sales And Engineering, LLC, Leoni Ag, Leoni Kabel GmbH, Leoni Wiring Systems, Inc., Leonische Holding, Inc., Leoni Wire Inc., Leoni Elocab Ltd., Leoni Bordnetz-Systeme GmbH, Sumitomo Electric Industries, Ltd., Sews Canada Ltd., Sumitomo Wiring Systems, Ltd., Sumitomo Electric Wiring Systems, Inc., Sumitomo Wiring Systems (U.S.A.), Inc., Yazaki Corporation, Yazaki North America, Inc., S-Y Systems Technologies Europe, GmbH, Denso Corporation, Denso International America, Inc., Techma Corporation, Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., Tokai Rika Co., Ltd., Tram, Inc., TRQSS, Inc., G.S. Electech, Inc., G.S.W. Manufacturing, Inc., G.S. Wiring Systems Inc., Mitsubishi Electric Corporation, Mitsubishi Electric Automotive America, Inc., Mitsubishi Electric Sales Canada Inc., Hitachi, Ltd., Hitachi Automotive Systems, Ltd., and Hitachi Automotive Systems Americas, Inc., may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct. Other persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are not presently known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

14. The defendants are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

15. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

The Automotive Wire Harness Industry

16. Automotive Wire Harness Systems consist of the wires or cables and data circuits that run throughout an automotive vehicle. To ensure safety and basic functions (e.g., going, turning and stopping), as well as to provide comfort and convenience, automobiles are equipped with various electronics which operate using control signals running on electrical power supplied from the battery. The Automotive Wire Harness System is the conduit for the transmission of these signals and electrical power. Automotive Wire Harness Systems include, without limitation, the following components: wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, fuse boxes, relay boxes, junction block, speed sensor wire assemblies, and power distributors.

17. Automotive Wire Harness Systems are installed by automobile original equipment manufacturers ("OEMs") in new vehicles as part of the automotive manufacturing process.

18. For new vehicles, the OEMs – mostly large automotive manufacturers such as General Motors, Chrysler, Toyota and others – purchase Automotive Wire Harness Systems directly from the defendants and their co-conspirators. Automotive Wire Harness Systems may also be purchased by component manufacturers who then supply such systems to OEMs. These component manufacturers are also called “**Tier I Manufacturers**” in the industry. A Tier I Manufacturer supplies Automotive Wire Harness Systems directly to an OEM.

19. When purchasing Automotive Wire Harness Systems, OEMs issue Requests for Quotation (“**RFQs**”) to automotive parts suppliers on a model-by-model basis for model-specific parts. In at least some circumstances, the RFQ is sought from pre-qualified suppliers of the product. Typically, the RFQ would be made when there has been a major design change on a model-by-model basis. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs. The OEMs usually award the business to the selected automotive parts supplier for a fixed number of years consistent with the estimated production life of the parts program. Typically, the production life of the parts program is between two and five years. Typically, the bidding process begins approximately three years before the start of production of a new model. Once production has begun, OEMs issue annual price reduction requests (“**APRs**”) to automotive parts suppliers to account for efficiencies gained in the production process. OEMs procure parts for North American manufactured vehicles in Japan, the United States, Canada and elsewhere.

20. During the Clss Period, the defendants and their co-conspirators supplied Automotive Wire Harness Systems to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their co-conspirators manufactured Automotive Wire Harness Systems: (a) in North America for installation in vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in

vehicles manufactured in North America and sold in Canada, and (c) outside North America for installation in vehicles manufactured outside North America for export to and sale in Canada.

21. The defendants and their co-conspirators intended, as a result of their unlawful conspiracy, to inflate the prices Automotive Wire Harness Systems and new vehicles containing Automotive Wire Harness Systems sold in North America and elsewhere.

22. The defendants and their co-conspirators unlawfully conspired to agree and manipulate prices for Automotive Wire Harness Systems and conceal their anti-competitive behaviour from OEMs and other industry participants. The defendants and their co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Automotive Wire Harness Systems would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their co-conspirators were aware that, by unlawfully increasing the prices of Automotive Wire Harness Systems, the prices of new vehicles containing Automotive Wire Harness Systems would also be artificially inflated. The defendants and their co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Automotive Wire Harness Systems and purchasers and lessees of new vehicles containing Automotive Wire Harness Systems. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Automotive Wire Harness Systems.

23. The global Automotive Wire Harness Systems market was valued at US \$21.9 billion in 2009, and increased by 32.2% to US \$29 billion in 2010.

24. By virtue of their market shares, the defendants and their co-conspirators are the dominant manufacturers and suppliers of Automotive Wire Harness Systems in Canada and the world. The defendants' customers include Suzuki, Honda, Nissan, Toyota, Mitsubishi and Subaru.

25. The automotive industry in Canada and the United States is an integrated industry. Automobiles manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Automotive Wire Harnesses in the United States of America and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

Canada

26. Yazaki Corporation has agreed to plead guilty in Canada and pay a \$30 million criminal fine for bid-rigging relating to motor vehicle electrical wiring, lead wire assemblies, cable bond, motor vehicle wiring connectors, motor vehicle wiring terminals, electronic control units, fuse boxes, relay boxes, and junction boxes.

27. Furukawa Electric Co. Ltd. has agreed to plead guilty in Canada and pay a \$5 million criminal fine for bid-rigging relating to fuse boxes, relay boxes, and junction boxes.

United States

28. Yazaki Corporation agreed to plead guilty and pay a fine of US\$470 million in respect of its role in the alleged conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, fuse boxes, relay boxes, and junction blocks, as well as two other automotive parts.

29. Denso Corporation agreed to plead guilty and pay a fine of US\$78 million in respect of its role in the alleged conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of electronic control units, as well as one other automotive part.

30. Fujikura Ltd. agreed to plead guilty and pay a fine of US\$20 million in respect of its role in the alleged conspiracy to eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of wire harnesses, cable bond, automotive wiring connectors, automotive wiring terminals, and fuse boxes.

31. Furukawa Electric Co. Ltd. agreed to plead guilty and pay a fine of US\$200 million in respect of its role in the alleged conspiracy to eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, electronic control units, fuse boxes, relay boxes, junction blocks, and power distributors.

32. G.S. Electech, Inc. agreed to plead guilty and pay a fine of US\$2.75 million in respect of its role in the alleged conspiracy to eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of speed sensor wire assemblies. Speed sensor wire assemblies are a specific type of wire harness.

Europe

33. The European Commission fined Yazaki Corporation, Furukawa Electric Co. Ltd., S-Y Systems Technologies Europe GmbH and Leoni Wire Inc. a combined €141 million for

infringements of Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement creating the European Economic area, which consisted of agreements or concerted practices to coordinate their pricing behaviour and allocate supplies of wire harnesses to certain manufacturers relating to Automotive Wire Harness Systems sold to Toyota, Honda, Nissan and Renault. Sumitomo Electric was granted immunity for being the first entity to report the cartel to the European Commission.

Japan

34. Japan's Fair Trade Commission has fined Furukawa Electric Co. Ltd., Fujikura Ltd., Sumitomo Electric Industries, Ltd., and Yazaki Corporation a combined ¥12.9 billion (US\$169 million) for substantially restraining competition in the automotive parts industry by conspiring to appoint the designated successful bidder during the Automotive Wire Harness Systems procurement process (bid-rigging).

Plaintiffs Purchased New Vehicles Containing Automotive Wire Harness Systems

35. During the Class Period, Sheridan purchased for resale the following brands of vehicles manufactured by GMCL or its affiliates: Chevrolet, Oldsmobile, and Cadillac.

36. During the Class Period, Sheridan also purchased for resale vehicles manufactured by the following other automotive manufacturers: Suzuki Canada Inc., CAMI Automotive Inc., GM Daewoo Auto & Technology Company and Daewoo Motor Co.

37. During the Class Period, Pickering purchased for resale the following brands of vehicles manufactured by GMCL or its affiliates: Isuzu, Saab and Saturn.

38. During the Class Period, Pickering also purchased for resale vehicles manufactured by the following other automotive manufacturers: Isuzu Motors Ltd., Adam Opel AG and Subaru Canada Inc.

39. The vehicles purchased by Sheridan and Pickering were manufactured in whole or in part at various times in Ontario or other parts of Canada, the United States, Japan, and other parts of the world.

40. Sheridan and Pickering purchased new vehicles containing Automotive Wire Harnesses.

41. Fady Samaha purchased a new Honda Civic in 2009, which contained an Automotive Wire Harness System.

Breaches of Part VI of *Competition Act*

42. From at least as early as January 1, 1999 until at least March 1, 2010, the defendants and their co-conspirators engaged in a conspiracy to rig bids for and to fix, maintain, increase or control the prices of Automotive Wire Harness Systems sold to customers in North America and elsewhere. The defendants and their co-conspirators conspired to enhance unreasonably the prices of Automotive Wire Harness Systems and/or to lessen unduly competition in the production, manufacture, sale and/or distribution Automotive Wire Harness Systems in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Automotive Wire Harness Systems and new vehicles Automotive Wire Harness Systems.

43. The defendants and their co-conspirators carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in the United States, Japan, Europe, and elsewhere to discuss the bids (including RFQs) and price quotations to be submitted to OEMs selling automobiles in North America and elsewhere;
- (b) agreeing, during those meetings, conversations, and communications, on bids (including RFQs) and price quotations (including APRs) to be submitted to OEMs in North America and elsewhere (including agreeing that certain defendants or co-conspirators would win the RFQs for certain models);
- (c) agreeing on the prices to be charged and to control discounts (including APRs) for Automotive Wire Harness Systems in North America and elsewhere and to otherwise fix, increase, maintain or stabilize those prices;
- (d) agreeing, during those meetings, conversations, and communications, to allocate the supply of Automotive Wire Harness Systems sold to OEMs in North America and elsewhere on a model-by-model basis;
- (e) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments in North America and elsewhere;
- (f) submitting bids (including RFQs) price quotations, and price adjustments (including APRs) to OEMs in North America and elsewhere in accordance with the agreements reached;
- (g) enhancing unreasonably the prices of Air Conditioning Systems sold in North America and elsewhere;
- (h) selling Automotive Wire Harness Systems to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing,

maintaining or stabilizing prices of Automotive Wire Harness Systems in North America and elsewhere;

- (i) allocating the supply of Automotive Wire Harness Systems sold to OEMs in North America and elsewhere on a mode-by-model basis;
- (j) accepting payment for Automotive Wire Harness Systems sold to OEMs in North America and elsewhere at collusive and supra-competitive prices;
- (k) engaging in meetings, conversations, and communications in the United States, Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (l) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent “paper trails”, abusing confidences, communicating by telephone, and meeting in locations where they were unlikely to be discovered by other competitors and industry participants; and
- (m) preventing or lessening, unduly, competition in the market in North America and elsewhere for the production, manufacture, sale or distribution of Automotive Wire Harness Systems.

44. As a result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid unreasonably enhanced/supra-competitive prices for Automotive Wire Harness Systems and/or new vehicles containing Automotive Wire Harness Systems.

45. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1) and 47(1) of the *Competition Act*. The plaintiffs claim loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

Breach of Foreign Law

46. The defendants and their co-conspirators' conduct, particularized in this statement of claim, took place in, among other places, the United States, Japan, and Europe, where it was illegal and contrary to the competition laws of the United States, Japan, and Europe.

Civil Conspiracy

47. The defendants and their co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages, to the plaintiffs and other members of the Proposed Class. The unlawful means include the following:

(a) entering into agreements to rig bids and fix, maintain, increase or control prices of Automotive Wire Harness Systems sold to customers in North America and elsewhere in contravention of sections 45(1), 46(1), and 47(1) of the *Competition Act*; and

(b) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

48. In furtherance of the conspiracy, the defendants, their servants, agents and co-conspirators, carried out the acts described in paragraph 43 above.

49. The defendants and their co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the plaintiffs and other members of the Proposed Class for

Automotive Wire Harness Systems, and to illegally increase their profits on the sale of Automotive Wire Harness Systems.

50. The defendants and their co-conspirators intended to cause economic loss to the plaintiffs and other members of the Proposed Class. In the alternative, the defendants and their co-conspirators knew in the circumstances that their unlawful acts would likely cause injury.

Discoverability

51. Automotive Wire Harness Systems are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Automotive Wire Harness Systems industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Automotive Wire Harness Systems.

52. Accordingly, the plaintiffs and other members of the Proposed Class did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

Fraudulent Concealment

53. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the plaintiffs and other members of the Proposed Class. The defendants and their co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the plaintiffs. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

54. The defendants' and their co-conspirators' anti-competitive conspiracy was self-concealing. As detailed in paragraph 43 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

55. Because the defendants' agreements, understandings and conspiracies were kept secret, plaintiffs and other members of the Proposed Class were unaware of the defendants' unlawful conduct during the Class Period, and they did not know, at the time, that they were paying supra-competitive prices for Automotive Wire Harness Systems and/or new vehicles containing Automotive Wire Harness Systems.

Unjust Enrichment

56. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Automotive Wire Harness Systems. All members of the Proposed Class have suffered a corresponding deprivation as a result of inflated prices for Automotive Wire Harness Systems and/or new vehicles containing Automotive Wire Harness Systems. There is no juristic reason or justification for the defendants' enrichment, as such conduct is tortious, unjustifiable and unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place.

57. It would be inequitable for the defendants to be permitted to retain any of the ill-gotten gains resulting from their unlawful conspiracy.

58. The plaintiffs and members of the Proposed Class are entitled to the amount of the defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

Waiver of Tort

59. In the alternative to damages, in all of the circumstances, the plaintiffs plead an entitlement to “waive the tort” of civil conspiracy and claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the defendants and their co-conspirators as a result of their unlawful conspiracy.

60. As a direct, proximate, and foreseeable result of the defendants’ wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Automotive Wire Harness Systems. As a result of the unlawful conspiracy, the defendants profited from the sale of Automotive Wire Harness Systems at artificially inflated prices and were accordingly unjustly enriched. The defendants accepted and retained the unlawful overcharge. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the alleged conspiracy.

Damages

61. The conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to Automotive Wire Harness Systems sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada;
- (b) the prices of Automotive Wire Harness Systems sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada have been fixed, maintained, increased or controlled at artificially inflated; and

- (c) the plaintiffs and other members of the Proposed Class have been deprived of free and open competition for Automotive Wire Harness Systems in Ontario and the rest of Canada.

62. Automotive Wire Harness Systems are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Automotive Wire Harness Systems follow a traceable chain of distribution from the defendants and their co-conspirators to the OEMs (or alternatively to the Tier Manufacturers I and then to the OEMs) and from the OEMs to automotive dealers to consumers or other end-user purchasers. Costs attributable to Automotive Wire Harness Systems can be traced through the distribution chain.

63. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Proposed Class have sustained losses by virtue of having paid higher prices for Automotive Wire Harness Systems and/or new vehicles containing Automotive Wire Harness Systems than they would have paid in the absence of the illegal conduct of the defendants and their unnamed co-conspirators. As a result, the plaintiffs and other members of the Proposed Class have suffered loss and damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

Punitive, Aggravated and Exemplary Damages

64. The defendants and their co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Automotive Wire Harness Systems. They were, at all times, aware that their actions would have a significant adverse impact on all members of the Proposed Class. The conduct of the defendants and their

co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the plaintiffs' and Proposed Class members' rights.

65. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages in favour of each member of the Proposed Class.

Service of Statement of Claim Outside Ontario

66. The plaintiffs are entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 because:

- (a) Rule 17.02 (g) – the claim relates to a tort committed in Ontario;
- (b) Rule 17.02 (h) – the claim relates to damage sustained in Ontario arising from a tort; and
- (c) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.

67. The plaintiffs propose that this action be tried at Toronto, Ontario.

Jan. 6., 2015

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Court File No.

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM
(Automotive Wire Harness Systems)**

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